



Proposed Regulation Agency Background Document

Agency name	Common Interest Community Board
Virginia Administrative Code (VAC) citation	18 VAC 48 -70
Regulation title	Common Interest Community Ombudsman Regulations
Action title	Initial Common Interest Community Ombudsman Regulations
Date this document prepared	November 6, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

This is a new regulation that establishes the requirement that, pursuant to § 55-530 of the Code of Virginia, each association establish and adopt written complaint procedures for the resolution of written complaints from the members of the association and other citizens, establishes minimum requirements for such procedures, provides for the distribution of these procedures to the members of the association and citizens, requires the maintenance of association records of complaints, and indicates the consequences for failure of an association to establish and utilize a complaint procedure. The regulation also establishes procedures and forms for filing a notice of final adverse decision with the Board.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

None.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 55-530.I states that “[t]he Board may prescribe regulations which shall be adopted, amended or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) to accomplish the purpose of this chapter.” In addition, § 55-530.E states that “[t]he Board shall establish by regulation a requirement that each association shall establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens. . .” § 54.1-201.E states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulation is mandatory to implement Chapters 851 and 871 of the Acts of the 2008 General Assembly.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The new regulation establishes the requirement that each association must establish reasonable procedures for the resolution of written complaints from the members of the association and other citizens, record-keeping related to complaints filed, forms and procedures to be provided, transmittal of information to members regarding the Office of the Common Interest Community Ombudsman, and procedures for filing a notice of final adverse decision with the Board. The new regulation is necessary to implement Chapters 851 and 871 of the Acts of the 2008 General Assembly, which were the result of HB 516 and SB 301. The goal of the regulation is establish the requirements for associations to handle complaints and provide information to the public for filing a notice of adverse decision with the Board, in accordance with HB 516 and SB 301.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

The regulation include provisions required pursuant to § 55-530.E, F, G, and I of the Code of Virginia. This includes, but may not be limited to, requirements for the association complaint process, process for filing a notice of final adverse decision, submitting an inquiry to the Office of the Common Interest Community Ombudsman and related provisions.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the public is that associations will be required to establish and utilize written complaint procedures to ensure the resolution of complaints from their members, and to inform their membership of the right to file a notice of final adverse decision with the Board if the association issues a final decision adverse to their complaint. No disadvantage to the public could be identified.

The primary advantage to the Commonwealth is that the regulation will require association complainants to seek resolution within their association prior to filing any complaint with the Office of the Common Interest Community Ombudsman. No disadvantage to the Commonwealth could be identified.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No impact on localities has been identified as resulting from the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Trisha L. Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, fax to (804) 527-4205, or email to cic@dpor.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.</p> <p>One-Time: There are no new one-time costs associated with these regulations.</p> <p>Ongoing: There are no new ongoing costs associated with these regulations.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>No change anticipated.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>The regulations will affect associations that are required to register with the CIC Board that do not currently have an internal written complaint procedure to resolve written complaints from the members of their associations and other citizens. The regulations will also affect association members by providing a means for filing a notice of any final adverse decision of their association with the Office of the CIC Ombudsman.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than</p>	<p>Approximately 4,650 registered associations are affected.</p>

500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	No economic impact is anticipated to the regulants. A \$25 filing fee will be charged to association members or citizens. This fee may be waived by the board if it causes undue financial hardship to the complainant. Any revenue for the Department from this filing fee has already been analyzed under the original Board regulations that are currently in place.
Beneficial impact the regulation is designed to produce.	The regulation is a result of a legislative mandate from the 2008 General Assembly Session. The impact of the regulation is to require associations to handle internal complaints and provide information to the public for filing a notice of any adverse decision with the Board.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Chapters 851 and 871 of the Acts of the 2008 General Assembly and the Code of Virginia mandate the establishment of the regulation. Therefore, no alternatives exist to evaluate.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulations were developed with consideration that the affected industries consist of small businesses. The Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on small businesses and are consistent with the regulation of small businesses of other professions.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received during the public comment period.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on families in Virginia has been identified as resulting from the proposed regulation.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Provides the statutes that empowers the Board to develop the regulations.	Chapter 23.3 of Title 54.1 and Chapter 29 of Title 55	Provides the scope of the Board’s powers.
20	This section provides the definitions of various terms used in the regulations.	Definitions contained in Chapter 29 of Title 55 and Chapter 4.2 of Title 55	Explanation of various terms used in regulation.
30	Requires all documents to be submitted to the Department.	Chapter 29 of Title 55	To avoid confusion since different sections of the statutes require filings with the Board, the Director, or the Ombudsman’s Office. If all documentation is filed with the Department, staff will channel the documentation to the appropriate recipient.
40	Requires associations to develop a complaint	§ 55-530.E	Will require associations that do not have a written complaint

	procedure.		procedure to establish one.
50	Require associations to certify establishment and adoption of a written compliant procedure as part of their registration with the Board.	None	Require associations at time of registration with the Board and each annual report filing to certify that a complaint procedure has been established and adopted by the association.
60	Establishes requirements for association complaint procedures.	§ 55-530	To ensure that complaint procedures for all associations contain the same minimum provisions.
70	Establishes procedures for the distribution of an association's complaint procedure.	§ 55-510.2 and § 55-79.75:1	To ensure that association complaint procedures are distributed and are readily available to all members and citizens.
80	Requires that associations maintain complaint records.	§ 55-530.E.1	Ensures that complaint records are appropriately maintained and available upon request.
90	Identifies the consequences to an association for failing to establish and utilize a complaint procedure.	Chapter 23.3 of Title 54.1	To inform associations of the Board's authority to take action against an association to remedy any violation of Virginia law and these regulations.
100	Establishes procedures and requirements for filing a notice of final adverse decision.	§ 55-530.F and 18 VAC 48-70-110	To ensure that a final adverse decision has been made by an association prior to filing a notice of such decision with the Board. Also, to ensure that all information required for processing such notice is received.
110	Allows the Board to waive the \$25 notice filing fee upon a finding of undue financial hardship for the complainant.	§ 55-530.F	The \$25 filing fee and waiver allowance is a statutory requirement.
120	Establishes the procedure for the review of the final adverse decision.	§ 55-530.G	This procedure is described in statute.
130	Describes decisions made by the Director upon review of a final adverse decision by an association.	§ 55-530.G	This decision is described in statute.
140	Indicates the authority of the Office of the Common Interest Community Ombudsman.	§ 55-530	The authority of the Office of the Common Interest Community Ombudsman is established and described in statute.